

July 19, 2007

Ms. Cheryl Gridley
137 East Pendle
South Bend, Indiana 46637

Re: Formal Complaint 07-FC-171; Alleged Violation of the Access to Public Records Act by the Town of Roseland

Dear Ms. Gridley:

This is in response to your formal complaint alleging the Town of Roseland ("Town") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to minutes of two town meetings. I find that the Town of Roseland did not violate the APRA.

BACKGROUND

You are the Clerk-Treasurer of Roseland. Your complaint alleges you gave to Teddy Penn two different requests for the copy or original of meeting minutes. You indicate Mr. Penn did not respond to your request. You do not indicate the date of your request.

In response to your complaint, the Town indicates that although it is the duty of you or your office to attend town meetings and take minutes, you did not do so for the meetings in question. Further, the Town indicates it is the duty of you or your office to video record such meetings. The Town further suggests that perhaps, since minutes of the meetings you say you are requesting are attached to your complaint, you are seeking a copy of a video recording of the meetings. The Town explains that Mr. Penn's wife frequently video records meetings using her personal equipment, as do other individuals.

You filed your complaint on June 20, 2007. The Town responded on July 17, 2007. I am enclosing a copy of the response for your records.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code 5-14-3-1. "Public record" means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generalized on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics. IC 5-14-3-2(m).

A "public agency" includes any town board, commission, department, division, bureau, committee, office, instrumentality, or authority. IC 5-14-3-2(l). A private individual is not a public agency. To the extent you are requesting, as the Town suggests, a copy of the video recording of a meeting or meetings, disclosure requirements under the APRA do not apply to a video recording taken by a private citizen, even if she is the wife of a town official.

The town Clerk-Treasurer shall serve as the clerk of the legislative body by attending its meetings and recording its proceedings. IC 36-5-6-6(a)(9). If you are seeking copies of meeting minutes, memoranda, or recordings, it is my opinion you would be the official at the public agency responsible for creating and maintaining those records.

CONCLUSION

For the foregoing reasons, I find that the Roseland Town Council did not violate the Access to Public Records Act.

Best regards,

Heather Willis Neal
Public Access Counselor

cc: Michael Lipinsky, Town Attorney